

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

BILLY REZAC;

Emmet County, Iowa

ADMINISTRATIVE CONSENT ORDER

NO. 2010-AQ-33

TO: Billy Rezac  
PO Box 557  
Dolliver, IA 50531

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (Department) and Billy Rezac for the purpose of resolving an issue pertaining to the illegal open burning of solid waste. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Bryon Whiting, Field Office 3  
Iowa Department of Natural Resources  
1900 N. Grand  
Spencer IA 51301-2200  
Phone: 712-262-4177

**Relating to legal requirements:**

Jon Tack, Attorney for the DNR  
Iowa Department of Natural Resources  
502 E 9<sup>th</sup> St.  
Des Moines, IA 50319  
Phone: 515-281-8889

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative consent order is issued pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

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**III. STATEMENT OF FACTS**

1. Billy Rezac owns a property located at 3032 Main Street in Dolliver, Iowa.
2. On February 26, 2010, the Department received a complaint alleging that Scott Herum, doing business as Herum Excavating, had torn down and illegally burned a residential home in Dolliver.
3. On March 12, 2010, Environmental Specialist Bryon Whiting determined that the fire had not been conducted by the City of Dolliver.
4. On March 19, 2010, Mr. Whiting contacted Billy Rezac by phone. Mr. Rezac admitted he lit the fire on February 26<sup>th</sup> to burn the demolished residence and asserted that he did not know that such burning is illegal.
5. On March 22, 2010, a Notice of Violation was issued to Billy Rezac.
6. On March 25, 2010, Mr. Whiting visited the subject property and took photographs of site conditions on that date.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.
2. 567 IAC 23.2 states that no person shall allow, cause, or permit open burning of combustible materials except as provided in subrules 567 IAC 23.2(2) (variances) and 567 IAC 23.2(3) (exemptions). The burning documented in this matter does not fall under 567 IAC 23.2(2) exemptions and the burning of trade wastes is specifically prohibited. The above facts demonstrate a violation of this provision.

**V. ORDER**

THEREFORE, the Department orders and Billy Rezac agrees, to pay a penalty in the amount of \$1,128, within 30 days of the execution of this administrative consent order.

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**VI. PENALTY**

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000 per day of violation for each of the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with an administrative penalty of \$1,128. The administrative penalty is determined as follows:

Economic Benefit – Billy Rezac has achieved an economic benefit from the violations documented herein. The illegal open burning of solid waste results in the avoidance of time, labor and disposal costs. The Northern Plains Regional Landfill, which accepts waste from the geographic area that includes the Rezac property, charges \$35.50 per ton of solid waste for disposal. It is estimated that more than 17.7 tons of solid waste was burned by Billy Rezac. Therefore an economic benefit penalty of \$628 is assessed for this factor.

Gravity – The illegal open burning of solid waste can degrade air quality, violate ambient air standards, and endanger human health and the environment. The open burning of the home in this case occurred in a residential neighborhood and therefore poses an increased risk of harm to residents. Based on these facts, a penalty of \$400 is assessed for this factor.

Culpability – Billy Rezac hired a demolition contractor to have the residence demolished. Information related to proper disposal was readily available from the demolition contractor or from the Department or other local governmental sources. Although the Department accepts that Billy Rezac was not aware of the illegality of his conduct, a small assessment is warranted for this factor due to the failure to attempt to gain the readily available information. Therefore, \$100 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

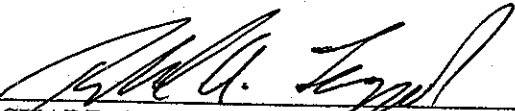
This administrative consent order is entered into knowingly and with the consent of Billy Rezac. For that reason Billy Rezac waives his rights to appeal this administrative consent order or any part thereof.

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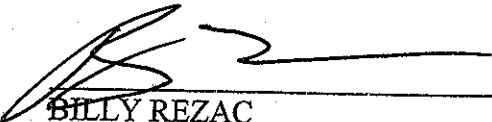
Billy Rezac

VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146. Total compliance with all provisions of Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.

  
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RICHARD A. LEOPOLD, DIRECTOR  
Iowa Department of Natural Resources

Dated this 27 day of  
July, 2010.

  
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BILLY REZAC

Dated this 14 day of  
July, 2010.

Field Office 3; VIC